There may be instances where failure to comply with the provisions of law regarding the issue of search warrants may exclude some of the effects of the search carried out as a result of the warrant so issued. A good example of this is to be found in the Common Gaming Houses Ordinance, 1953 (No. 26 of 1953). Under section 19 of that Ordinance a presumption that a place is a common gaming house and that the same is so kept or used by the occupier thereof is raised in cases where instruments or appliances for gaming are found in any place entered under that Ordinance. That Ordinance contains provisions regarding formalities to be followed before a warrant of arrest or of search is to be issued. If these provisions are not followed then a place is not entered *under* that Ordinance and the presumption under Section 19 would not arise. In the present case therefore Ex. 5 was admissible notwithstanding that the provisions of Section 28 were not complied with.

For the above reasons the appeal with regard to the second and fourth charges must fail.

Order accordingly

REGINA v. HOR HOW CHOO

[A. Cr. J. (Spenser Wilkinson J.) March 11, 1955]

[Penang — Criminal Appeal No. 5 of 1955]

Customs Duties (Exemption) Order, 1953 — Interpretation of — Duty of person to declare all dutiable articles.

The Customs Duties (Exemption) Order, 1953, provides that persons entering the Federation can take in without paying duty used portable articles, if imported in the baggage or on the person of the passenger and provided that the proper officer of customs is satisfied that the articles were such that a passenger might reasonably carry with him for his own regular and private use. The question in this case was whether the respondent had committed an offence in not declaring the two bangles which she was wearing in such a manner as not to be visible when she proceeded to the mainland from Penang. At the trial, the learned President of the Sessions Court acquitted her and against this acquittal the Crown appealed.

Held: (1) every passenger proceeding to the mainland is bound to declare all dutiable articles which he has with him and even used portable articles, if dutiable, remain liable to duty until they have been declared and allowed to pass by a Customs officer; (2) therefore the respondent in this case was wrongly acquitted.

MAGISTRATE'S CRIMINAL APPEAL.

D. C. Jackson (Sr. Federal Counsel) for the appellant.

I. K. Meek for the respondent.

Spenser Wilkinson J. : — At the conclusion of the hearing of this appeal I intimated that the appeal would be allowed and the respondent admonished and discharged, but as the point of law involved was of some importance I would give my reasons in writing, which I now do.

The respondent was charged with failing to make a declaration to the Customs authorities at Butterworth in respect of two gold bangles which she was wearing in such a manner as not to be visible when she proceeded to the mainland on the 28th December, 1954 and, alternatively, with being knowlingly concerned in an attempted fraudulent evasion of Custom duty on the bangles. She claimed trial and after hearing all the evidence the learned President of the Sessions Court acquitted her. From this acquittal the Crown appealed.

The only ground of appeal concerned the interpretation of the Customs Duties (Exemption) Order, 1953, which enables persons entering the Federation to take in without paying duty used portable articles, if imported in the baggage or on the person of the passenger and provided that the proper officer of Customs is satisfied that the articles are such as a passenger might reasonably carry with him for his own regular and private use. It was contended that as a matter of law the learned President should have convicted the respondent on the main charge.

In his grounds of decision the learned President stated that the only question to be decided was whether or not Section 99 of the Customs Ordinance puts a duty on all passengers to declare everything that would be dutiable but for the Customs Duties (Exemption) Order, 1953. He thought that if this Section placed a duty upon every passenger to declare everything the result would be startling, because passengers might have to declare everything they carried with them including their underwear. He found as a fact that the respondent had not declared the articles when she passed through the barrier. But in view of the fact that before being searched she then drew attention to the gold bangles which she was wearing under her armpits; of the fact that the bangles were portable personal articles; and of his reading of the law he acquitted the respondent.

For the Crown it was contended that it was the duty of a passenger to declare everything on his person or with him which was dutiable and that by reason of sub-section (3) of Section 13 of the Ordinance even goods such as portable articles remained dutiable unless and until they had been declared to the proper officer of Customs and he was satisfied that they could reasonably be used or carried for personal use.

In my opinion where the provisions of an enactment are clear the fact that those provisions may have

inconvenient results is no reason for not enforcing the enactment according to its plain meaning. Even apart from the provisions of sub-section (3) of Section 13 the exemption from duty under the Customs Duties (Exemption) Order, 1953 can in my view take effect only when the conditions therein laid down have been fulfilled; and those conditions have not been fulfilled until a proper officer of Customs has considered the situation and decided whether the articles are such as a passenger might reasonably carry for his own regular and private use. Section 13(3) removes any possible doubt as to the meaning to be attributed to the Exemption Order. In the circumstances of the case now before me no officer of Customs was given the opportunity before the goods were imported to express his satisfaction that the goods come within the conditions laid down in the Exemption Order; the goods were, therefore, dutiable at the time when the respondent actually imported them; and therefore as she failed to declare them she was clearly guilty of an offence under Section 129(1)(e) of the Customs Ordinance. In my opinion every passenger proceeding to the mainland is bound to declare all dutiable articles which he has with him and even used portable articles, if dutiable, remain liable to duty until they have been declared and allowed to pass by a Customs officer.

Mr. Meek, on behalf of the respondent, contended that there was insufficient evidence on the record to support the learned President's finding of a failure on the part of the respondent to declare. It is true that the 3rd Prosecution Witness, who was asked to search the respondent, asked her, immediately before the search, if she had anything to declare and the respondent then said she had a pair of bangles under her armpits. This declaration was, however, in my opinion too late. Nor did the suggestion that the respondent did not understand Malay and therefore could not be expected to declare when she was asked to do so by a Malay Revenue Officer impress me. The learned President accepted the evidence of the 2nd Prosecution Witness that he had asked the respondent if she had any dutiable goods and she said she had none. I am, therefore, of the opinion that the finding of the learned President that the respondent did not declare these bangles when first asked to do so was correct.

For these reasons I was of opinion that the acquittal by the learned President was wrong and I therefore reversed his order and substituted a finding that the charge of failing to declare was proved, together with an order that the respondent be admonished and discharged, under the provisions of Section 183 of the Criminal Procedure Code.

Owing to the extremely rigorous provisions of Section 123 of the Ordinance on being satisfied that an offence had been committeed I had no alternative but to order the forfeiture of the bangles which are valued at something over $800. Had I any discretion in the matter I would not in this case have ordered forfeiture of the bangles, as I think this is a punishment out of all proportion to the gravity of the crime. I think there is little doubt that this prosecution was based, at least to some extent, upon a misunderstanding. When Mr. Fudge, the Customs Officer asked the respondent why she was wearing these bangles up under her armpits where they were not visible she replied: "To deceive the customs Officers". Mr. Fudge, I think not unnaturally, assumed from this that the respondent was confessing to a deliberate attempt to evade Customs duty. It appears, however, from the evidence and the findings of the learned President that what the respondent really meant was that she genuinely believed herself entitled to import these bangles without duty as being part of her personal property and therefore concealed the bangles in order to avoid the business of being questioned about them and having to go to the trouble of arguing the whole question with the Customs as to whether or not they were liable to duty. Bearing this in mind and the fact that Mr. Fudge admitted in evidence that these bangles might reasonably be used as personal jewellery I think the offence committed was really no more than a technical one. The learned Deputy Public Prosecutor who conducted the appeal admitted that the main purpose of the appeal was to settle the question of law involved and as far as he was concerned it was not his object to obtain forfeiture of the bangles. I felt justified, therefore, in expressing the hope that the appropriate authorities will see fit to order the return of these bangles to the respondent. Pending a ruling as to this I ordered that the bangles in question be retained in Court pending further order.

Order accordingly.

Solicitors for the respondent: *Presgrave & Matthews.*

PUBLIC PROSECUTOR v. CHENG FAH

[A. Cr. J. (Wilson J.) Kuala Lumpur — December 2, 1952]

Criminal procedure — Minor Offences Enactment (Cap. 46), s. 34(f) — Charge of loitering — Sentence.

The respondent was found loitering on the Klang Road at about 3.15 a.m. on July 30, 1952. He pleaded guilty to the offence contrary to s. 34(f) of the Minor Offences Enactment and was fined $5. The learned Magistrate stated that he took into consideration the fact that the respondent had been in the lock-up for a month and that no previous convictions had been brought